IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1106 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

DINESH SAVJIBHAI PIPALIA

Appearance:

MR HARDIK C RAWAL for Petitioner - Corporation.

MR MAHENDRA P RAVAL for Respondent Workmen.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/05/2000

ORAL JUDGEMENT

Rule. Mr. M.P.Raval appearing on behalf of the respondent waives service of rule. With the consent of the advocates for both the sides, the matter has been taken up for final hearing today and the same is finally heard today.

2. In the present petition, the order passed by the Deputy Labour Commissioner and Concilition Officer in Approval Application No. 195 of 1998 dated 5.11.99 has been challenged, wherein the approval application filed by the petitioner Corporation under Section 33 (2)(b) of the Industrial Disputes Act, 1947 has been rejected.

3. The respondent workman was working as driver with the petitioner Corporation. On 15.9.93, the respondent was on duty as such on Morbi-Jamnagar route and an accident took place involving his S.T. bus and a truck. A charge-sheet was issued to him on 25.4.1996 and after holding legal and valid departmental inquiry on proved misconduct, the respondent workman was dismissed from service by order dated 30.10.1998. At that occasion an industrial dispute was pending before the Deputy Labour Commissioner and Concilition Officer. Therefore, the petitioner Corporation had filed an approval application being No. 195/98 under the provisions of Section 33 (2)(b) of the Industrial Disputes act, 1947. Before the Concilition Officer, the respondent workman was represented by one representative of the Union and on behalf of the petitioner Corporation one representative Shri G.S.Bhatt had appeared and made their submissions before the Authority. The contention was raised by the respondent workman that the departmental inquiry which was conducted against the respondent is against the principles of natural justice and punishment of dismissal is against the procedure of ST Corporation and principal of natural justice. The respondent workman has pointed out that before the Motor Accident Claim Tribunal, the petitioner Corporation has submitted the reply in claim case no.246/93 and on affidavit it was mentioned that the said accident had not occurred due to any negligence on part of the ST driver but it was a negligence on the part of the truck driver. Therefore, the submission was made that the Divisional Controller, who is the Appointing Authority has not hold responsible the respondent workman but Lower Authority, Depot Manager has held that the respondent workman was negligent in driving the vehicle and he is guilty for the accident. Before the Concilition Officer, the petitioner Corporation has not produced any statement or documents or any evidence and relying upon the submissions made by the respondent workman considering the affidavit of the Divisional Controller in the Motor Accident Claim No. 246/93, the Conciliation Officer has come to the conclusion that the dismissal order which was passed against the respondent workman by the Depot Manager is against the principles of natural justice and result thereto, approval application has been rejected by the Approval Authority. The said

order of Approval Authority has been challenged by the petitioner Corporation in the present petition. The effect of rejection of the approval application is that the dismissal order passed against the respondent workman dated 30.10.98 cannot come into effect and the same is considered to be null and void. Therefore, the respondent workman is deemed to be in service and entitled to full back wages for the interim period.

4. Mr.Raval submitted that the view taken by the approval authority is totally perverse and he cannot solely rely upon the affidavit of the Divisional Controller which was filed in the Motor Accident Claim Case No. 246/93 because it was a defence statement produced by the Divisional Controller against the claim case filed by the injured person. Therefore, the said affidavit cannot be taken into account while examining the question whether the legal and valid inquiry has been conducted against the respondent or not and whether the principles of natural justice has been violated or not and is there any malafide, victimisation, unfair labour practise adopted by the petitioner Corporation or not and is there any prima facie case proved against the respondent or not and whether the approval application and notice pay has been made and paid simultaneously to the respondent workman on the date of dismissal i.e. 30.10.98 or not. These are the aspects required to be examined by the Approval Authority but same has not been examined and relying upon the affidavit of the Divisional Controller filed claim case is a basic error committed by the Approval Authority. Therefore, the order passed by the Approval Authority is required to be set aside.

5. Learned Advocate Mr.Raval appearing on behalf of the respondent workman has pointed out that in accident case, the respondent workman was not liable for the accident and there was no negligence in the said accident of the respondent and such negligence was not proved in the departmental inquiry and Approval Authority has rightly considered the affidavit of the Divisional Controller.

6. After the submissions were made by both the learned advocates, the question is now required to be examined whether the Approval Authority who has not considered the relevant aspect while deciding the approval application, then matter must have gone back for fresh decision of the Approval Authority because the petitioner has also not produced any documentary evidence before the Approval Authority, no oral evidence was laid by the petitioner Corporation and there is no finding

given by the Approval Authority in respect to prima facie case, legality and validity of departmental inquiry, findings of victimisation, malafide and unfair labour practise of the petitioner Corporation. Therefore, in such situation for fresh decision the matter should have been sent back to the Approval Authority but at that occasion both the learned Advocates have submitted that the respondent workman who is out of job since 30.10.1998 and if the matter is sent back to the Approval Authority then again some time must have to be consumed for his decision and in such circumstances delay will occur which ultimately will be a burden upon the petitioner Corporation and simultaneously the workman will have to suffer unemployment and during this period for him it is very difficult to maintain the family.

7. In view of this facts and circumstances, both the Learned advocates jointly submitted to this Court that in this case, the Court must have exercised the powers under Section 11-A of the Industrial Disputes Act, 1947. As per the decision in the case of Workmen of Bharat Fritz Werner (P) Ltd Vs. Bharat Fritz Werner (P) Ltd. and Anr reported in JT 1990 (1) SC 305. On relying upon the said decision both the Learned Advocates jointly requested to this Court that considering the observations made by the Apex Court in such situation, the High Court can exercise the powers similar to under Section 11-A of the Industrial Disputes Act and to pass appropriate orders in respect to the punishment after considering the merits of the matter.

8. I have considered the submission of both the learned advocates and I have also gone through the decision which has been cited by both the learned advocates and observations made in the said decisions. The Apex Court has observed that the Learned Judges were of the view that the said acts of misconduct were not such as to deserve extreme penalty of dismissal and have directed that these workman should be taken back on duty but with 1/2 of the back wages. The Learned Judge considered denial of 1/2 wages as sufficient punishment to the workmen for the acts of misconduct committed by them. the aforesaid directions have been given by the High Court while exercising the powers which are exercised by the Industrial Tribunal Act in view of the joint memo dated 22.6.84 submitted by both the parties whereby it was requested that the Court may decide the entire matter without remitting it to the Tribunal and grant appropriate relief finally in accordance with law. Moreover, in view of the provisions contained in Section 11-A of the Act which empowers the Industrial Tribunal to

go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the Tribunal to set aside the order of discharge or dismissal, as the circumstances of the case may require. It was open to the High Court what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these 5 workmen were not such as to warrant dismissal and denial of 1/2 back wages for the period of about 6 years was adequate, punishment for the misconduct found to have been committed. I do not find any infirmity in the aforesaid view expressed by the Appellate Bench of the High Court.

9. Considering the observations made by the apex Court in the above referred case and on the basis of the oral request made by both the Learned Advocates, now I am examining the merits of the matter. The allegations against the respondent workman that he remained negligent in driving the vehicle and because of that he met with an accident with the truck. In the said accident, it was not the case of a fatal accident occurred but some of the passengers were injured and damage to the bus and truck. In the departmental inquiry which was held against the respondent workman, the reporter was examined who was not eye witness and a criminal case which was filed against the respondent workman is pending for decision. As per the statement made by the Learned Advocate Mr.Raval, there is nothing on record to produce by the petitioner Corporation that in past the workman concerned has committed similar type of misconduct of accidents. Therefore, it must have to be presumed that the past record of the respondent workman must have been clean and good. Considering the affidavit of the Divisional Controller that in the present accident, the driver of the ST bus was not negligent but the truck driver was responsible for the said action and in view of the fact that in the departmental inquiry no eye witness was examined and the chargesheet was served to the respondent workman on the basis of papers submitted by the Police and a criminal case is pending against the respondent workman & his past record is not produced on record. Considering this all aspect of the matter, there is no fatal accident and there is nothing on record to prove the fact that the respondent workman was liable for the misconduct alleged against the respondent workman. Therefore considering this fact in such situation, if according to my opinion, back wages for the interim period is denied to the respondent workman by way of penalty to the misconduct in question then it would meet the ends of justice. Therefore considering these facts,

the respondent workman is not entitled to any amount of back wages from the date of dismissal i.e. 30.10.98 till the date of decision of the Approval Authority dated 5.11.99. The respondent workman is entitled to reinstatement with continuity of service and with full wages from the date of order passed by the Approval Authority i.e. 5.11.99 onwards.

10. Considering the facts on record and also examining the merits of the matter, the order passed by the Approval Authority is required to be set aside and same is hereby set aside with a direction to the petitioner Corporation to reinstate the respondent workman in service with continuity and without back wages for the interim period from the date of dismissal i.e. 30.10.98 to 5.11.99 and respondent workman is entitled to full wages from the date of the order passed by the Approval Authority i.e. on 5.11.99 till the date of actual reinstatement. It is directed to the petitioner Corporation to reinstate the respondent workman in service within a period of 4 weeks from the date of receiving a certified copy of the said order and pay the full wages from 5.11.99 till actual reinstatement within a period of 6 weeks from the date of receiving the certified copy of the said order. The petition is partly allowed. Rule is made absolute to that extent. No orders as to costs.

(H.K.Rathod, J) jitu